

## **Minimum Public Participation Requirements for WQS Adoption**

**Minimum public hearing requirement from the WQS regulations at §131.20(b):** Prior to adoption of new or revised WQS subject to EPA review and approval under section 303(c) of the Clean Water Act, a state must hold at least one non-adjudicatory public hearing for purposes of collecting public comments on the proposed new or revised WQS consistent with the requirements of 40 CFR 25.5 (summarized below).

**Applicability:** New or revised WQS include anything subject to review and approval by EPA under section 303(c) such as: new/revised designated uses, new/revised criteria (narrative/numeric), revisions to a state's antidegradation policy, variances from WQS, site-specific water quality criteria, changes to a state's compliance schedule authorizing provisions, changes to a state's mixing zone authorizing provisions.

### **Procedural requirements for public hearings from 40 CFR §25.5:**

- Public notice of the hearing at least 45 days prior to the date of the hearing;
- The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information;
- Reports, documents and data relevant to the discussion at the public hearing, shall be available to the public at least 30 days prior to the date of the hearing;
- Hearings shall be held at times and locations that, to the extent possible, facilitate and maximize participation;
- The State or Tribal agency holding the hearing shall schedule witnesses in advance to ensure adequate time for all and shall include time for unscheduled testimony;
- The State or Tribal agency holding the hearing shall provide an introduction at the hearing informing those present of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public; and
- The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it and make a copy available for public review.

**WQS Regulation:** 40 CFR §131.20 State review and revision of water quality standards

(b) *Public participation.* The State shall hold one or more public hearings for the purpose of reviewing water quality standards as well as when revising water quality standards, in accordance with provisions of State law and EPA's public participation regulation (40 CFR part 25). The proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.

## **Federal Public Hearing Regulation: 40 CFR §25.5 Public hearings**

### **§25.5 Public hearings.**

(a) *Applicability.* Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) *Notice.* A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by §25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) *Locations and time.* Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) *Scheduling presentations.* The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) *Conduct of hearing.* The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(f) *Record.* The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.